

1 THE HONORABLE RONALD B. LEIGHTON  
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11 UNITED STATES DISTRICT COURT  
12 WESTERN DISTRICT OF WASHINGTON  
13 AT TACOMA  
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15 DOUGLAS E. BAKER and VERNELL F.  
16 BAKER, husband and wife; HARD ROCK  
17 TRUCKING, INC., a Washington State  
18 Corporation,  
19

20 Plaintiffs,

21 v.

22 CLALLAM COUNTY, a Political Subdivision  
23 of the State of Washington; JEFFERSON  
24 COUNTY, a Political Subdivision of the State  
of Washington; JOHN PRENTISS, Clallam  
County Prosecutor; FRED DEF'RANG,  
Former Clallam County Undersheriff; RON  
CAMERON, Sheriff of Clallam County;  
JUELIE DALZELL, Jefferson County  
Prosecutor,

25 Defendants.

26 NO. C08-5147 RBL

27 ORDER ON MOTION TO DISMISS

28 **I. INTRODUCTION**

This matter comes before the Court on Defendants' motion to dismiss. [Dkt. #6] Having reviewed the submissions of the parties and the remainder of the file herein, the Court GRANTS the motion in part, GRANTS Plaintiffs leave to amend their summonses, and DENIES the motion in all other respects.

**II. BACKGROUND**

Police began investigating Plaintiff Douglas Baker ("Baker") in June 1986, when he made a \$5,000 earnest money payment in cash, and his suspicious realtor told police. *State v. Baker*, Nos. 31134-8-II,

1 31724-9-II, 30994-7-II, 2005 WL 1888533, at \*1 (Wash. Ct. App. Aug. 9, 2005). Baker was later  
 2 identified by several informants as someone who had sold cocaine, and the police briefly surveilled his  
 3 residence. *Id.* Investigation continued off-and-on until January 2000, when the Clallam County Sheriff  
 4 and the Washington State Patrol applied for and received thirteen search warrants. *Id.* These warrants  
 5 covered Baker's personal and business financial and phone records, and led to the discovery of sufficient  
 6 evidence to support additional search warrants for Baker's residence. *Id.* at \*5. Baker was eventually  
 7 arrested, charged, and convicted of one count of money laundering, one count of manufacturing a  
 8 controlled substance, marijuana, and fourteen counts of delivering a controlled substance, cocaine. *Id.* at  
 9 \*6. However, the Washington Court of Appeals, Division II, found the original warrants invalid, and  
 10 Baker's convictions were overturned. *See id.*

11 In January 2004, before the Court of Appeals heard the case, Baker entered into a "Comprehensive  
 12 Plea Agreement" ("Agreement") with Jefferson County. [Plaintiffs' Response, Dkt. #8] This agreement  
 13 also included charges against Baker from Clallam and Grays Harbor Counties. [Id.] Under the Agreement,  
 14 the counties were obligated to sell certain of Baker's properties at fair market value, returning fifteen  
 15 percent of the proceeds to Baker.<sup>1</sup> [Complaint, Dkt. #1, p. 5] The Agreement also required the counties to  
 16 return specific items listed in the Agreement to Baker and to allow Baker's wife thirty days from the date  
 17 of closing to remove certain belongings from the couple's home. [Id.]

18 Plaintiffs complaint was filed on March 12, 2008. Plaintiffs aver that the Agreement was signed  
 19 under duress and that the counties breached the Agreement; they also claim that the counties violated their  
 20 constitutional rights by searching their properties without a valid search warrant. [Id., pp. 5-6] Plaintiffs'  
 21 complaint contains causes of action for breach of contract, rescission, intentional infliction of emotional  
 22 distress, and damages under 42 U.S.C. § 1983 ("§ 1983"). [Id., pp. 7-8]

23 Defendants entered their notices of appearance on April 4, 2008. Before answering the complaint,  
 24 they moved the Court to dismiss the complaint for lack of subject matter jurisdiction, insufficiency of  
 25 process, and failure to state a claim upon which relief may be granted, Fed. R. Civ. P. 12(b)(1), (4), (6).  
 26 [Motion to Dismiss, Dkt. #6]

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 28 <sup>1</sup> At this stage in the litigation, the Court accepts as true the facts in Plaintiffs' complaint. *See Canyon  
   County v. Syngenta Seeds, Inc.*, 519 F.3d 969, 974-75 (9th Cir. 2008).

### III. DISCUSSION

#### **A. Subject Matter Jurisdiction**

The Court has original jurisdiction over Plaintiffs' federal claims and supplemental jurisdiction over Plaintiffs' related state law claims. *See* 28 U.S.C. § 1331, 1334, 1367; *Dible v. City of Chandler*, 515 F.3d 918, 924 (9th Cir. 2008). However, Defendants argue that Plaintiffs have not fully complied with RCW 4.96; as such, they claim that subject matter jurisdiction is lacking as to (1) all claims brought against the individual defendants and (2) all claims brought by Hard Rock Trucking, Inc. ("Hard Rock"). The Court disagrees.

RCW 4.96.020(4) requires aspiring plaintiffs to file a “notice of claim” sixty days prior to commencing any tort action against a local government entity. *Troxell v. Rainier Pub. Sch. Dist. No. 307*, 154 Wn.2d 345, 350-51, 111 P.3d 1173 (2005). The purpose of the tort claim requirement is to allow “government defendants to investigate claims and settle those claims where possible.” *Id.* at 351 (quoting *Medina v. Pub. Util. Dist. No. 1 of Benton County*, 147 Wn.2d 303, 317, 53 P.3d 993 (2002)). The tort claim requirement now applies to suits against individual government employees, but it does not apply to claims under 42 U.S.C. § 1983 or to actions for breach of contract. *Wright v. Terrell*, 162 Wn.2d 192, 195 n. 1, 170 P.3d 570 (2007) (per curiam) (individuals); *id.* at 196 (§ 1983); *Wilson v. City of Seattle*, 122 Wn.2d 814, 820, 863 P.2d 1336 (1993) (breach of contract).

The parties agree that plaintiffs Douglas and Vernell Baker have complied with the tort claims requirement as to defendants Jefferson County and Clallam County. [See Motion to Dismiss, Dkt. #6, p. 2; Ex. 1 to Mack Declaration, Dkt. #7] However, the Court finds that the Bakers have *not* complied as to the individual defendants and that plaintiff Hard Rock has not complied at all.<sup>2</sup> Thus, all tort claims brought by Hard Rock or alleged against the individual defendants are dismissed, without prejudice.

## **B. Sufficiency of Process**

Defendants also seek dismissal based on various defects in the summonses. However, a motion to dismiss based on a defective summons should be granted only when the defect is prejudicial to the

<sup>2</sup> Plaintiff's argument that Defendants are estopped from raising this defense is without merit. This case is distinguishable from *Dyson v. King County*, 61 Wn. App. 243, 809 P.2d 769 (1991), where the county allowed the suit to proceed for two years before raising the defense. *Id.* at 244. Here, Defendants have raised the issue at the outset of the litigation, before answering the complaint.

1 defendant. 4A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1088 (3d ed.  
 2 2002). The Defendants have not alleged any prejudicial effect, and the Court finds none at this stage in the  
 3 litigation. Thus, the Court GRANTS Plaintiffs leave to amend and re-serve their summonses.<sup>3</sup> See Fed. R.  
 4 Civ. P. 4(a) (allowing amendment). Defendants' motion to dismiss for insufficiency of process is denied.<sup>4</sup>

5 **C. Failure to State a Claim<sup>5</sup>**

6 Lastly, Defendants move to dismiss for failure to state a claim, Fed. R. Civ. P. 12(b)(6). Their first  
 7 such argument is more accurately characterized as a request for a more definite statement, Fed. R. Civ. P.  
 8 12(e). To be sure, Plaintiffs' complaint is poorly drafted,<sup>6</sup> but it is not so "vague or ambiguous" that  
 9 Defendants "cannot reasonably be required to frame a responsive pleading." Fed. R. Civ. P. 12(e).

10 Defendants also argue that Plaintiffs' breach of contract claims should be dismissed because they are  
 11 based on a plea agreement and because Baker has failed to exhaust his challenges to that agreement in state  
 12 court. In support, Defendants cite only inapposite case law dealing with habeas corpus petitions.

13 "[H]abeas corpus is the exclusive remedy for a state prisoner who challenges the fact or duration of  
 14 his confinement and seeks immediate or speedier release," *Heck v. Humphrey*, 512 U.S. 477, 481, 114  
 15 S.Ct. 2364, 129 L.Ed.2d 383 (1994), and the federal habeas corpus statute "requires that state prisoners  
 16 first seek redress in a state forum." *Id.* at 480-81. However, "exhaustion of state remedies is *not* a  
 17 prerequisite to an action under § 1983[.]" *Id.* at 480 (emphasis in original) (internal quotations omitted).  
 18 Once a prisoner's conviction or sentence has been reversed on appeal or otherwise invalidated, that prisoner  
 19 is free to bring suit for damages for the allegedly unconstitutional conviction or imprisonment. *See id.* at  
 20 486-87. Because Baker's conviction was reversed on appeal, he was not required to exhaust his state court  
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22       <sup>3</sup> The Court notes that Plaintiffs may request waiver of service under Fed. R. Civ. P. 4(d) and that  
 23 absent a showing of good cause, Defendants will be taxed the costs of effecting service if they decline the  
 24 waiver. *See Fed. R. Civ. P. 4(d)(2)*.

25       <sup>4</sup> In passing, Defendants also assert that Fred DeFrang has not been served at all. [Motion to Dismiss,  
 26 Dkt. #6, p. 5] A motion to dismiss for insufficiency of service of process, Fed. R. Civ. P. 12(b)(5), is not  
 27 currently before the Court, and Defendants have submitted no competent evidence to support such a request.

28       <sup>5</sup> In their reply, Defendants move the Court to "exclude" materials other than the pleadings, at least as  
 29 those materials pertain to the motion to dismiss for failure to state a claim. [Defendants' Reply, Dkt. #10, pp.  
 30 4-5] Plaintiffs' complaint, standing alone, is sufficient to survive the motion to dismiss, and the Court therefore  
 31 DENIES Defendants' request to exclude as moot.

32       <sup>6</sup> The complaint on file with the Court also appears to be missing its third page.

1 remedies prior to filing this suit. Plaintiffs complaint raises a right to relief "above the speculative level."

2 See *Bell Atlantic Corp. v. Twombly*, - - - U.S. - - -, 127 S.Ct. 1955, 1968, 167 L.Ed.2d 929 (2007).

3 Defendants' motion to dismiss for failure to state a claim is therefore denied.

4 **IV. CONCLUSION**

5 All tort claims brought by Plaintiff Hard Rock Trucking, Inc., are DISMISSED, without prejudice;  
6 all tort claims brought against the named individual defendants, John Prentiss, Fred DeFrang, Ron Cameron,  
7 and Juelie Dalzell, are also DISMISSED, without prejudice. The Court GRANTS Plaintiffs leave to amend  
8 their summonses and to effect service of those amended summonses. Defendants motion to dismiss [Dkt.  
9 #6] is otherwise DENIED.

10 IT IS SO ORDERED.

11 DATED this 13<sup>th</sup> day of May, 2008.

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13 RONALD B. LEIGHTON  
14 UNITED STATES DISTRICT JUDGE

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